IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1966 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHABDSHARAN P. SONGIRI

Appearance:

1. Special Civil Application No. 1966 of 2002

MR HARDIK C RAWAL for Petitioner No. 1

RULE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/04/2002

ORAL JUDGEMENT

Heard Mr.H.C.Rawal, learned advocate appearing on behalf of the petitioner.

The petitioner Corporation has challenged the award passed by the Labour Court, Surat in Reference

No.379 / 1999 dated 1st January, 2001, wherein the labour court has granted reinstatement with continuity of service without backwages of interim period. This Court has issued RULE returnable on 22nd March, 2002 and granted ad-interim relief in terms of para-7[C] of the prayer clause vide order dated 8th February, 2002. However, notice of RULE issued by this Court has remained unserved on the respondent work man.

Learned advocate Mr.Rawal for petitioner Corporation has submitted that serious misconduct has been committed by the respondent workman, even though the labour court has exercised the powers under Section 11-A of the Industrial Disputes Act, 1947 which is basic error committed by the labour court while granting such relief in favour of the respondent workman. Learned advocate Mr.Rawal has also submitted that the labour court has also committed gross error in coming to the conclusion that misconduct is not found to have proved and therefore, award in question is required to be quashed and set aside.

I have considered submissions of learned advocate Mr.Rawal on behalf of the petitioner Corporation. Before the Labour Court, the respondent workman has challenged the dismissal order dated 11th March, 1998. In support of his case, the respondent had submitted statement of claim vide Exh.11 and thereafter, the petitioner Corporation has filed written statement vide Exh.10. Thereafter, documentary evidence has been produced by the petitioner Corporation vide Exh.6 which also included default card of the respondent workman. The respondent workman had not challenged the legality and validity of the inquiry vide Exh.13 and also not claimed any backwages of the interim period by way of said purshis and requested the labour court to exercise the powers under Section 11-A of the I.D.Act. Thereafter, vide Exh.14 the respondent workman has not led any further evidence and the petitioner Corporation has also closed its evidence vide Exh.12. Thereafter, the labour court has examined the merits of the matter. T he allegation made against the respondent workman that on 20-11-1996 when he was on his duty on bus route from Shirdi to Ahmedabad, said bus was checked, at that time, five and one half passengers of one group travelling from Shirdi to Surat, fare of Rs.400/against the actual fare of Rs.458.50 ps was collected but proper tickets were not issued. It was also allegation against the workman that though signal was given by the Checking Inspector , bus was not stopped by the driver and therefore, after overtaking the bus in question, the checking staff had

carried out checking. In departmental inquiry, the respondent workman has denied the allegations made against him. Thereafter, reporter was examined who was cross examined by the respondent workman. In cross examination of the reporter, the reporter in terms admitted that those tickets were obtained by the checking staff from the passengers, were found with proper punch mark. However, it was only explained by the reporter that if the passengers had boarded from Shirdi , as per the Rules, regular panch was required to be made in Column No.1. The labour court has also considered that at the time of checking, S.T.Cash was not checked by the checking staff. Thereafter, the respondent workman was examined by the competent authority wherein, he admitted the statement which bear his signature and even statements of the passengers wherein also signature was made by the respondent workman. Explanation was called for from the respondent workman by the competent authority wherein he explained to the effect that five and one half passengers of one group had in fact boarded from Toharabad and after the bus left the stand of Toharabad, immediately the respondent had issued tickets to these five and half passengers which were found properly punched by the checking inspector as mentioned in cross examination. He also pointed out in explanation before the competent authority that according to requirement, proper punch mark for Toharabad stand was made on the tickets which was found just and proper. It is further pointed out that the way bill was open at the time of checking and the also clarified that because the way bill was found open at the time of checking, there was some doubt in the mind of the checking staff and that is how the checking staff suspected and / or believed that default has been committed by the workman. The labour court has also observed that it was burden upon the employer to prove the misconduct against the respondent workman. The Corporation has not produced any independent witness in the departmental inquiry except examination of reporter. The labour court has also considered aspects that in fact, it was duty of the petitioner Corporation to prove the charge levelled against the workman that who were the passengers who had actually boarded from which stand; and whether said passengers were rightly given tickets by the respondent workman or not; whether on being given signal, the bus was stopped or not; whether the bus was stopped on being overtook by the vehicle of the checking staff and in the mean time, whether the workman had given to the concerned passengers or not. It is also observed by the labour court that all these abovestated aspects ought to have proved in the departmental inquiry proceedings by the

petitioner by examining independent witness, but in inquiry proceedings, no such independent witness was examined except the reporter. Therefore, considering all these aspects and the fact that even the reporter was not aware the actual fare from Shirdi to Surat, so also the fact that way bill was open at the time of checking as well as considering the evidence of the respondent workman wherein detailed explanation given by the respondent workman in departmental inquiry and cross examination of the reporter, ultimately the labour court has come to the conclusion that misconduct which has been alleged against the respondent workman is not found to have proved as per the evidence led in the departmental inquiry. No independent witness was examined in departmental inquiry to prove the misconduct against the respondent workman. Thereafter, the labour court has committed second question, whether the punishment of dismissal is just or not. The labour court thereafter also considered one more aspect that since the misconduct is not found to have proved in departmental inquiry and therefore, the order of dismissal is required to be quashed and set aside. Thus, the labour court has set aside the dismissal order while exercising the powers under Section 11-A of the I.D.Act, 1947. The labour court has rightly observed that the respondent workman has not claimed any amount of backwages and Purshis to that effect was also filed before the labour court and therefore the respondent workman is not entitled to any amount of backwages. Therefore, the labour court has only granted reinstatement with continuity of service without any backwages of the interim period.

In the present petition, wherein the allegation is made against the respondent workman that after seeing the checking staff, the workman had issued the tickets to the passengers. So just before the time of checking, tickets were not issued by the respondent workman to the concerned passengers. Similar situation was considered by the Apex Court in case of Mheshkumar Mishra vs. U.P. State Road Transport Corporation reported in AIR 2000 SC 1151, wherein the Apex Court has considered that in such circumstances, punishment imposed on delinquent employee is considered to be shockingly disproportionate and relied upon the reporter in absence of the independent evidence, the Apex Court has come to the conclusion that misconduct cannot be said to have proved. The relevant observations of the Apex Court in aforesaid decision in paras- 5 to 10 are referred as under :-

"5. The Bus which was checked by the Transport Inspector was meant to ply within the

District of Allahabad and was not a long distance Bus. The allegation against the respondent was that though the passengers had boarded the Bus at the "High Court" for "Manauri" for which they should have been charged Rs.1.80, they were issued tickets from "Zero Road" to "Manauri" and they were charged only Rs.1.50. The only evidence on the basis of which the respondent was punished was the way bill and the tickets which had not been punched. The passengers were not examined at the trial nor was the statement of any passenger recorded at the time when the Bus was checked so that it could be ascertained whether they had boarded the Bus at the "High Court" or at "Zero Road". Reliance was placed by the Disciplinary Authority and the Tribunal on the report of the Transport Inspector which also bears the signature of the respondent. This document was relied upon by the Disciplinary Authority as also by the Tribunal on the ground that if the contents of the report were not correct, the respondent ought not to have signed the report and he should have protested then and there. Since this was not done, the inference drawn by the Disciplinary Authority as also by the Tribunal was that whatever was written in the report was correct and it was on that basis that the respondent was held to be guilty.

"6. It was in the background of these circumstances that the High Court exercised its discretion under Article 226 of the Constitution and interfered with the quantum of punishment inflicted by the Disciplinary Authority. It may be that the order of dismissal was held to be valid and proper by the U.P. State Public Services Tribunal but the Tribunal also overlooked the fact that though sufficient evidence could have been collected at the spot to indicate that the passengers to whom tickets were issued by the respondent had boarded the Bus at the "High Court" and not at "Zero Road" but this was not done. It was a Bus plied in the City itself and, therefore, the passengers, who were available in the Bus, being local passengers, could have been approached at the spot for stating whether they had boarded the Bus at the "High Court" or at "Zero Road". Learned counsel for the appellants has placed reliance upon an unreported decision of this Court in Civil Appeal No.9754 of 1995, arising out of SLP (C) No.1960

of 1994 (U.P. State Road Transport Corporation v. Om Prakash Pandey), in which the order of the High Court, by which interference was made with the punishment inflicted upon the delinquent employee of the Corporation, was set aside. This case is clearly distinguishable on the ground that a number of passengers were allowed to travel without tickets and, therefore, the misconduct imputed to the employee was serious. This is not the case here as the respondent had issued tickets to all the passengers, who were found travelling in the Bus, but the dispute was only with regard to the spot or place at which they had boarded the Bus. To put if differently, the dispute was whether they had boarded the Bus at "Zero Road" or at the "High Court". In these circumstances, the High Court was justified in interfering with the quantum of punishment.

7. A Three Judge Bench of this Court in B.C.Chaturvedi v. Union of India, [1965] 6 SCC 749 : [1995 AIR SCW 4374 : AIR 1996 SC 484 : 1996 Lab IC 462] laid down as under [Para 18 of AIR, LAB IC].

"A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof".

8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee, if, that penalty, shocks the consciences of the Court. The law, therefore, is

not, as contended by the learned counsel for the appellants, that the High Cout can, in no circumstances, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

9. Another Three Judge Bench of this Court in Colour Chem Ltd. V. A.L. Alaspurkar [1998] 3 SCC 192 : [1998 AIR SCW 709 : AIR 198 SC 948 : 1998 Lab IC 974], has also laid own the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the Court to interfere.

10. As pointed out earlier, the order of the High Court though extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was shocked to notice that though all the passengers had been issued tickets, the only dispute was with regard to the point at which they had boarded the bus for which the punishment of dismissal from service was highly disproportionate."

In view of above observations of the Apex Court on identical issue and discussion in relation to instant case, when it was not proved that in fact from which stand these five and half passengers had boarded and when the tickets were found with proper punch mark, therefore, according to my opinion, the labour court has rightly appreciated the evidence led in the departmental inquiry and rightly come to the conclusion that misconduct looking to the evidence recorded in the departmental inquiry, is not found to have proved and therefore, the labour court has not committed any error while passing the award under challenge. Learned advocate Mr.Rawal also failed to prove any other infirmity in the award in question. Moreover, there seems no jurisdictional error, nor any procedural irregularity committed by the labour court which in any way calls for interference of this Court while exercising the powers under Article 226 and 227 of the Constitution of India. Hence, there is no substance in this petition which requires rejection and the same is rejected accordingly.

Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs.

Date : 30-4-2002 [H.K. RATHOD, J.]

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